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UNITED STATES SENATE
Committee on Agriculture, Nutrition and Forestry 4/17/09

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April 17, 2009

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The Honorable Thomas J. Vilsack
Secretary of Agriculture
200-A Jamie L. Whitten Building
Washington, D.C. 20250

Re: Environmental Quality Incentives Program, 7 CFR Part 1466, Interim Final Rule with Request for Comments, Docket Number NRCS-IFR-08005

Dear Secretary Vilsack:

On January 15, USDA published an interim final rule (RIN 0578-AA45), 74 FR 2293, amending Environmental Quality Incentives Program (EQIP) regulations to incorporate changes made by the Food, Conservation, and Energy Act (FCEA) of 2008. On March 12, USDA extended the comment period to April 17, 74 FR 10674. I wrote to then-Secretary Ed Schafer on October 23, 2008 (attached) providing specific recommendations for carrying out the amendments made by the FCEA relating to organic production and the transition into organic agriculture. I am providing additional suggestions for modifications to the EQIP rule which are needed to fulfill Congressional intent and ensure success of the organic subprogram.

ADMINISTRATIVE FUNDING POOL CRITICAL TO PROGRAM SUCCESS

Section 2503 of FCEA creates what is in effect a new subprogram within EQIP to provide assistance for practices relating to organic production and the transition into organic production. In order for this subprogram to succeed in providing this assistance to organic producers, and to conform to Congressional intent, the Department will need to reserve a pool of funds administratively for which organic producers may apply. NRCS already provides such funding set-asides administratively within EQIP for other sectors within agriculture. At a minimum, five percent of EQIP funds should be reserved for the EQIP organic subprogram at the beginning of the fiscal year, starting in 2010, to ensure organic producers have access to the funding provided for them through new farm bill provision. In future years, the Department should monitor utilization of the program and set the reservation of funds according to demand. Any funds reserved for the organic subprogram at the beginning of the fiscal year but which are left unused can be reallocated to general EQIP eligible practices at a later point in the fiscal year. For fiscal 2009, since much of the year has passed, the Department should do everything possible within its authority, and as required by the FCEA, to allow producers to obtain EQIP assistance for practices related to organic production and transition to organic production.

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CLARIFY PAYMENT LIMITS TO ORGANIC PRODUCERS

The organic subprogram within EQIP has a statutory payment limitation of \$20,000 each year, and \$80,000 over a six-year period, for conservation practices relating to organic production and the transition into organic production. The purpose of this specific payment limitation, which is lower than the one for EQIP generally, is to allow as many organic producers as possible to obtain EQIP assistance from the funds available within the organic subprogram. The statement of managers in the conference report accompanying the FCEA stated:

“The Managers expect EQIP to be available to organic producers for conservation activities related to organic transition and production. The Managers expect EQIP to be available to producers who are transitioning their operations to certified organic production and organic producers who may be transitioning additional acres or animal herds.” Page 726 Report 110-627.

EQIP payments that are subject to this lower limitation are only for those practices related to organic production or transition to organic production; that is, only those practices specific to organic producers in meeting and maintaining organic production requirements and standards, such as in making a transition of conventional oilseed and grain fields to organic agriculture. The summary of the IFR provisions, at 74 FR 2305, states that “a producer may receive additional payments and is not subject to the organic payment limitation for conservation practices performed outside of those related to organic production, provided the sum total of all payments received does not exceed \$300,000 (unless a waiver is granted for an environmentally significant project).” This interpretation is correct and conforms to Congressional intent. The language in the IFR should be modified to make clear what is stated in the summary. Taken separately, the IFR might be interpreted to impose an overall EQIP payment limitation of \$80,000 upon organic producers – if all of their practices eligible for EQIP payments were considered related to organic production simply because they were carried out by an organic producer. That outcome would not conform to the statutory language or Congressional intent as described above. It is critical that there is no doubt under the final rule that organic producers may receive EQIP payments for additional conservation practices that are not specific to or integral to organic production or the transition to organic production -- such as terraces, fences, buffer strips, waterways or other practices that would improve environmental quality – provided the total of payments does not exceed the applicable general EQIP payment limitation.

ORGANIC CERTIFICATION

The FCEA provision prohibits the use of EQIP organic subprogram funds to cover costs that are eligible for cost-share payments under the organic certification cost-share program established in section 10606 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 6523, and administered by the Agricultural Marketing Service (AMS). This prohibition was adopted to draw a clear distinction between the two programs and to avoid any potential for duplicative or double federal payments offsetting the same producer cost for annual organic certification. The summary of provisions at 74 FR 2305 states that "payments may not be made to cover the costs associated with acquiring the actual organic certification." Section 1466.23 of the IFR includes additional language and strays from the statutory terms by prohibiting payments "to cover the costs associated with organic certification or for *practices* that are eligible for cost-share payments under the National Organic Program (7 U.S.C. 6523) (emphasis added)." The word "practices" is not in the statute, nor is it relevant in this context, and should be stricken to avoid ambiguity or confusion.

CONTRACT TERMINATION

Section 1466.26(f) of the IFR relating to contract termination should clearly specify that the termination of an EQIP contract for failure to pursue organic certification or to comply with the National Organic Program applies only to the producer's participation in the organic subprogram, and does not apply to contracts under general EQIP. Congress intended that the organic subprogram in EQIP be focused on producers who are actively working towards and maintaining organic certification by the National Organic Program. Hence, NRCS may terminate an EQIP contract covering practices relating to organic production and the transition into organic agriculture if the producer is not pursuing organic certification or is not in compliance with the National Organic Program. The final rule should be clear that an action to terminate an EQIP contract on that basis does not terminate any EQIP contract or contracts with the producer covering conservation practices that are not distinctively or closely tied to organic production or transition and are thus not a part of meeting organic certification requirements.

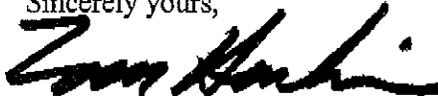
Section 1466.26(f) of the IFR also provides that the NRCS state conservationist will consult with the NRCS state technical committee to determine if an EQIP contract should be terminated because the producer failed to pursue organic certification or has been decertified. It is not clear why this consultation is required inasmuch as the NRCS state technical committee is not the body that would determine whether a producer is pursuing organic certification or has been decertified. Furthermore, the NRCS state technical committee is not involved in termination decisions for any other categories of EQIP contracts, and the special treatment of

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organic contracts seems anomalous. If any consultation is needed before an EQIP organic subprogram contract is terminated, it would be more logical for the state conservationist to consult the Agricultural Marketing Service (AMS), which oversees certification for the National Organic Program, or the appropriate state department or agency to which organic certification authority is delegated. This feature of the IFR is a good example of the importance of having good coordination between NRCS and the National Organic Program as outlined in my October 23, 2008 letter.

I ask that you incorporate my comments before promulgating the final rule, as well as the comments provided in the October 23, 2008 letter. Thank you for your assistance on these requests.

Sincerely yours,



Tom Harkin
Chairman

CC: Dave White, Chief, Natural Resources Conservation Service
David Shipman, Associate Administrator, Agricultural Marketing Service
Greg Johnson, Director, Financial Assistance Programs Division, Natural Resources Conservation Service

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October 23, 2008

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The Honorable Ed Schafer
Secretary of Agriculture
200-A Jamie L. Whitten Building
Washington, D.C. 20250

Dear Secretary Schafer:

Section 2503 of the Food, Conservation, and Energy Act of 2008 is written to include fully in the Environment Quality Incentives Program (EQIP) conservation practices related to organic production and the transition into organic agriculture. Some organic producers in certain states such as Minnesota and Montana have received assistance from EQIP for organic production and transition in the past. The 2008 farm bill makes it clear that organic producers across the nation are now eligible for assistance through EQIP for voluntary conservation practices relating to organic production and the transition into organic agriculture on some part or all of a farm or farming operation.

ORGANIC PRACTICES AND CONSERVATION BENEFITS

The intent of the statute is to assist producers with a broad range and variety of practices that satisfy the organic standards under the National Organic Program (NOP) and have conservation benefits. In fact, most organic practices have conservation benefits deserving assistance through EQIP. Organic production systems are very diverse and have strict standards to ensure proper soil fertility, including eliminating chemical usage, which, depending on the type of compounds no longer used will increase earthworms and other soil organisms to enhance water infiltration and soil aeration while reducing chemical and water run-off. More specifically, the Organic Foods Production Act of 1990, 7 U.S.C. §6513, requires that an organic system plan contain provisions designed to foster soil fertility through proper tillage, crop rotation, and manuring. The final regulations under the Act require a producer to maintain or improve the "physical, chemical, and biological condition of soil and minimize soil erosion" and "manage crop nutrients and soil fertility through rotations, cover crops, and the application of plant and animal materials." 7 C.F.R. §205.203. Therefore, it is important that the EQIP interim final rule is written broadly enough that it does not inadvertently exclude any organic practices that have conservation benefits from EQIP assistance. Additionally, it is important that organic production and transition practices be built into all NRCS state and county Field Office Technical Guides.

COORDINATION OF EQIP AND NOP

Since the components of the organic system plan and the purposes of EQIP are typically complementary, the Department should have a written plan providing for coordination between the Natural Resources Conservation Service (NRCS) and the National

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Organic Program, which is administered by the Agricultural Marketing Service (AMS). For example, NRCS personnel should be able to easily consult and understand components of the organic system plan covering soil fertility which is developed under guidance by AMS. Those in AMS carrying out the NOP should likewise be able easily to obtain and utilize information from NRCS that helps meet the common goals of NOP and EQIP. Coordination can almost surely save time and money for producers and USDA and avoid duplicative or conflicting requirements between EQIP and NOP. I suggest that it would be helpful for NOP and NRCS to develop a memorandum of understanding to ensure proper coordination.

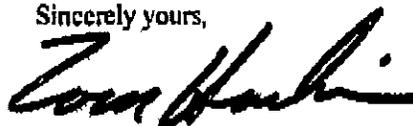
TECHNICAL ASSISTANCE

NRCS technical assistance is important for successfully implementing any new conservation practices and maximizing environmental benefits from NRCS conservation program funds. That is especially true in the case of organic production or transitioning to organic production, which involve systems requiring intensive knowledge and management. The farm bill's statement of managers provides guidance relating to technical assistance: "The managers are aware that organic conversion is a management-intensive activity and therefore encourage the Secretary to provide levels of technical and education assistance for organic conversion commensurate to the need." House Report 110-627 p. 726.

Although it is not expected that NRCS will immediately be able to provide expert knowledge regarding organic systems that have conservation benefits and conservation practices that are compatible with organic standards, it is important that NRCS meets the directive of providing an adequate and appropriate range of technical assistance for organic producers either directly or through technical service providers. NRCS, in states with EQIP organic transition programs, used training budget funds to send staff to organic training sessions. That should be strongly encouraged on a national scale to implement section 2503 fully and properly.

I ask that you incorporate my comments into the interim final rule to implement EQIP to ensure producers engaged in organic production or transitioning into organic agriculture have full access to and assistance under EQIP. Thank you in advance for your response to these requests.

Sincerely yours,



Tom Harkin
Chairman

Cc: Arlen Lancaster, NRCS Chief
David Shipman, Associate Administrator, AMS